

HEIRS OF GEORGE T. HOFFMAN, SR.

IBLA 92-600

Decided January 31, 1996

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting amendment to Native allotment application F-16953.

Reversed and remanded.

1. Alaska: Native Allotments--Alaska National Interest Lands Conservation Act: Native Allotments

A request for adjudication of an allotment as to the balance of lands included in the application initially filed with BLM which were not approved in a prior decision is properly distinguished from submission of an amended allotment application under sec. 905 of ANILCA. The latter covers modified land descriptions altered to identify lands originally intended to be included in the allotment application but erroneously described. A decision denying a request to adjudicate an allotment as to lands not previously approved on the ground it was an improper amendment of the application will be reversed and remanded for further consideration when it appears that the balance of the allotment application has not been adjudicated.

APPEARANCES: James J. Davis, Jr., Esq., Alaska Legal Services Corporation, for the heirs of George T. Hoffman, Sr.; Regina L. Sleater, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The heirs of George Hoffman, Sr., 1/ have appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated July 30, 1992, rejecting an "amendment" to Native allotment application F-16953.

1/ Hoffman died on Sept. 20, 1992. The reply brief filed on Feb. 1, 1993, lists Agnes Hoffman and Lucy Brown as heirs of George T. Hoffman, Sr.

The BLM decision recited that the amendment was filed pursuant to section 905(c) of the Alaska National Interest Lands Conservation Act of December 2, 1980 (ANILCA), 43 U.S.C. § 1634 (1988 and Supp. IV 1992).

The record shows that on March 28, 1972, the Bureau of Indian Affairs (BIA) filed an application on behalf of Hoffman for a Native allotment pursuant to the Alaska Native Allotment Act, as amended, 43 U.S.C. §§ 270-1 through 270-3 (1970) (repealed on Dec. 18, 1971, by section 18(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617(a) (1988)), subject to applications pending before the Department on that date. ^{2/} The applicant claimed to have used and occupied the land for hunting, trapping, fishing, and berrypicking from August through December since 1928. The application was filed for unsurveyed land north of the Kuskokwim River. The land is described in the application as "[f]ractional N $\frac{1}{2}$ N $\frac{1}{2}$, fractional SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, north of Kuskokuin [sic] River, Sec. 28, T. 17 N., R. 52 W., SM." The acreage of the land requested was not specified in the application. The sketch of the parcel on a photocopy of a U.S. Geological Survey map (Sleetmute (C-8) Quadrangle), attached to the application, depicts the parcel applied for as embracing a somewhat different configuration.

A favorable field examination was completed in 1974. In a report filed February 20, 1975, the BLM land law examiner concluded that the applicant had used the land in a substantially continuous manner for many years for subsistence purposes in the Native way of life. He noted that the claim had been used for residence purposes for the past 2 years. Regarding a log cache found on the land, the examiner stated:

The small log cache was found on a subsequent examination of the adjoining parcel to belong to Agnes M. Hoffman, F-16123. I subsequently met with Mr. Hoffman to discuss the ownership of the cache. I explained to him that Agnes Hoffman claimed the cache was built by her now-deceased husband and is part of her claim. Mr. Hoffman agreed to let Agnes Hoffman have the cache and agreed to adjust his boundary eastward to a point where the boundary line would run between the cache and smokehouse. In this manner, the cache will be included in Agnes Hoffman's parcel and the smokehouse and dwelling will remain on George Hoffman's parcel. [3/]

^{2/} The application was signed by Hoffman on Nov. 15, 1971, and certified by BIA on Mar. 22, 1972.

^{3/} In his report the examiner listed Hoffman's smokehouse and dwelling as improvements.

Subsequent to the favorable field examination, George Hoffman was notified by letter dated May 23, 1975, that he had "used the land that [he] applied for" and that a survey of the allotment boundaries would be made before issuance of a certificate of allotment. Thereafter, on November 17, 1989, BLM issued its notice of final date to amend the location of the lands described in the application pursuant to section 905(c) of ANILCA, 43 U.S.C. § 1634(c) (1988), informing Hoffman that his Native allotment

was scheduled for survey in 1990 or later. The BLM notice described the land in the allotment as follows: "Sec. 28, T. 17 N., R. 52 W., Seward Meridian. Total acreage containing approximately 80 acres." BLM allowed Hoffman 60 days from receipt of the notice to notify BLM if this land description did not represent the land for which he intended to apply. The return-receipt card shows that the notice was delivered to Mary Hoffman on November 24, 1989.

By decision dated May 21, 1992, BLM held that the allotment application "which was before the Department on November 15, 1971" was legislatively approved pursuant to section 905 of ANILCA, 43 U.S.C. § 1634 (1988 and Supp. IV 1992), effective June 1, 1981. ^{4/} This BLM decision held that the Native allotment was approved for the lands embraced in lot 1, U.S. Survey No. 6524, containing 79.95 acres. ^{5/}

On June 8, 1992, BLM received a letter from BIA enclosing documents received from the Kuskokwim Native Association (KNA) indicating Hoffman's application for Native allotment FF-016953 was intended to embrace 160 acres. This assertion was based upon documentation provided by Hoffman and concurred in by the KNA realty officer and BIA.

^{4/} Information in the case file indicates that a State access protest was filed on June 1, 1981, pursuant to section 905(a)(5)(B) of ANILCA, 43 U.S.C. § 1634(a)(5)(B) (1988), but was subsequently withdrawn on Oct. 10, 1981. BLM dismissed the protest by decision dated Nov. 27, 1981. It appears from documentation in the record that BLM regarded the protest as legally insufficient. Although a valid access protest required adjudication of an allotment application under the Native Allotment Act of 1906, 43 U.S.C. § 1634(a)(5)(B) (1988), this has been held to not be the case where the protest was legally insufficient (e.g., described different lands). See Marshall McManus, 126 IBLA 168, 172 (1993). On the facts of this case where the evidence of the allotment applicant's use and occupancy was found acceptable by BLM, the application would be subject to approval under the Allotment Act in any event. ^{5/} BLM's May 21, 1992, decision also rejected Village Selection application F-14900 - A2 filed by the Kuskokwim Corporation. BLM rejected the village selection application as to the surveyed land described in Hoffman's approved Native allotment application.

The documentation submitted by BIA included Hoffman's affidavit in which he stated that he had applied for 160 acres of land in his 1971 Native allotment application. Hoffman explained that during the 1974 field examination he agreed to adjust the boundaries of his Native allotment so that the cache belonging to Agnes Hoffman would not be included in his land. Hoffman said that he did not agree to reduce the acreage or relinquish any part of his allotment. According to Hoffman, the acreage was reduced without his knowledge and without any explanation that he would be receiving only 80 acres. Hoffman pointed out that BLM's notification in 1975 that his application was "OK" did not contain an acreage figure. Further, Hoffman stated that in 1989 when BLM and KNA wrote to inquire as to whether the land was in the correct location, they did not ask if the 80 acres were all that he was applying for. Hoffman stated that he did not understand the acreage at that time and that no one explained it to him until now. He requested that BLM add 80 acres to his allotment, explaining that it was his intent to apply for 160 acres in his 1971 Native allotment application. Hoffman referred to a copy of a hand drawn map describing 160 acres which he claimed was included in his original application. ^{6/}

In its decision dated July 30, 1992, BLM held that Hoffman's application was amended by the 1992 submission pursuant to section 905 of ANILCA in order to encompass the 160 acres of land the applicant originally intended to claim. BLM noted that a notice of final date to amend was issued to Hoffman on November 17, 1989, describing the allotment claim as encompassing "approximately 80 acres." Because Hoffman did not respond within the time required, BLM rejected the amendment.

In their statement of reasons for appeal, appellants assert that BLM's characterization of Hoffman's May 6, 1992, request to restore the acreage to 160 acres as a request to amend the application was improper because he had originally applied for the full 160 acres to which he was entitled. Appellants contend that BLM's notice to amend was not adequate to advise Hoffman that one-half of his allotment was no longer considered part of his application. Appellants state that he never received notice that his allotment was being reduced in size nor was there any indication that his willingness to adjust the boundary of his allotment to accommodate Agnes Hoffman's cache meant that he would not be receiving his full allotment.

Appellants assert that the conversation between Hoffman and the field examiner as recited in the field report does not constitute a valid relinquishment. Appellants point out that the report does not state that the examiner told Hoffman that adjusting the boundary would result in a loss

^{6/} The configuration of the parcel depicted in this map differed from both the land description in the application and the map attached to the application when it was filed with BLM.

of 80 acres nor that the examiner discussed other alternatives to resolve the difficulty. Appellants contend that it is not a fair reading of the report to say that Hoffman meant to give up his full entitlement. Referring to Hoffman's affidavit, appellants emphasize it is clear that Hoffman was unaware that relinquishment would be the effect of his conversation with the field examiner.

In its answer, BLM notes that neither Hoffman's application nor the Sleetmute C-8 map attached to the application contains any mention of acreage, and that the official case file does not include any other document filed with the application. BLM argues that the legal description in the application represents an area greatly in excess of 160 acres and that the area depicted on the map attached to the application when filed with BLM includes approximately 80 acres. It is asserted by BLM that resolution of this controversy hinges on the proper characterization of the events which led to the description of the parcel identified in Hoffman's application. BLM contends that the description of the tract in the application, which was inconsistent and unclear at first, was clarified by the discussion with the field examiner and the subsequent public land survey. Thus, BLM argues that the May 1992 submission was an impermissible untimely attempt to amend the land description in the application to embrace additional land not included in the application. Hence, BLM claims the case does not involve any issue of relinquishment.

[1] Section 905(c) of ANILCA provides authority for amendment of a Native allotment application in certain circumstances: "An allotment applicant may amend the land description contained in his or her application if said description designates land other than that which the applicant intended to claim at the time of application and if the description as amended describes the land originally intended to be claimed." 43 U.S.C. § 1634(c) (1988). The right to amend the application is subject to certain limitations. Thus, the statute explicitly provides that the "Secretary may require that all allotment applications designating land in a specified area be amended, if at all, prior to a date certain * * * to allow for orderly adoption of a plan of survey for the specified area." 43 U.S.C. § 1634(c) (1988); see Angeline Galbraith, 97 IBLA 132, 146 (1987). Hence, BLM asserts that its November 17, 1989, notice of final date to amend the location of the lands described in the application pursuant to section 905(c) of ANILCA had the effect of restricting Hoffman's allotment to the 80-acre tract subsequently surveyed as lot 1, U.S. Survey No. 6524. This same argument was made in the case of Matilda S. Johnson, 129 IBLA 82 (1994). In that case, subsequent to receipt of a Native allotment application embracing two parcels totalling 160 acres and after discovery of a conflict with a townsite involving one of the tracts, BLM advised the applicant that it would treat the application as including only the parcel not in conflict comprising 80 acres. Like the present case, the BLM notice to Johnson cited the amendment provision of section 905(c) and informed her that she should amend her application within 60 days if

she desired to claim more than that 80-acre parcel in her allotment application or she would be barred from claiming other lands. Distinguishing adjudication of the balance of the lands in the original application from an amended application, we refused to apply the restriction on amendments to bar adjudication of all the lands embraced in her application in a situation where it did not appear that the applicant was seeking to claim lands other than those identified in the original application. Matilda S. Johnson, *supra* at 86-87.

In reaching this conclusion, we noted that section 905(c) was only intended to allow amendment of a Native allotment application, subsequent to December 18, 1971, in order to accurately describe land originally intended to be claimed which was misdescribed in error. It was not intended to permit substitution or addition of new land not included in the original claim. See Alyeska Pipeline Service Co., 127 IBLA 156, 160-61 (1993); Mitchell Allen, 117 IBLA 330, 337 (1991). In the present case, like Johnson, it appears that Hoffman was seeking consideration of his entire allotment application. Although there is considerable ambiguity with respect to the lands described in the Hoffman application, it does not appear from the record that it was limited to the 80-acre tract identified in the BLM survey. 7/ Under the circumstances, the rejection of Hoffman's application as to all lands not included in lot 1 of U.S. Survey No. 6524 on the ground that Hoffman was seeking to improperly amend his application must be reversed. The case will be remanded to adjudicate the claim as to the lands described in the application. 8/

7/ Despite BLM's assertion that the lands embraced in the legal description by aliquot portion as quoted above contain more than the limit of 160 acres, we note that two of the subdivisions are described as "fractional." It appears from the master title plat that these tracts are riparian and, hence, would contain significantly less acreage than otherwise. The map which accompanied the application filed with BLM is drawn with such a scale and lack of precision as to make it impossible to determine either the acreage of the parcel (said by BLM to approximate 80 acres) or the legal description thereof. BLM has not cited any authority for the proposition that the map should take precedence over the land description in the application. Section 905(c) of ANILCA provides no authority for BLM to unilaterally amend Hoffman's claim. See Hermann T. Kroener, 124 IBLA 57, 64 (1992).

8/ Some of the lands found in the initial description are embraced in the conflicting allotment claim of Mary Hoffman. Section 905(b) of ANILCA provides that where a conflict exists between two or more Native allotment applications, the "Secretary shall adjust the descriptions to eliminate conflicts, and in so doing, * * * may expand or alter the applied-for allotment boundaries." 43 U.S.C. § 1634(b) (1988). Some of the other lands described in George Hoffman's allotment application, but not included in the surveyed tract, were included in an interim conveyance to the Kuskokwim Corporation (IC No. 733) expressly made subject to his Native allotment, F-16953.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded to permit further adjudication of the allotment application.

C. Randall Grant, Jr.
Administrative Judge

I concur.

Franklin D. Amess
Administrative Judge

